

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

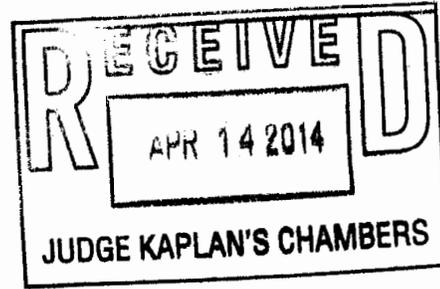
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UNITED STATES OF AMERICA,

Plaintiff,

v.

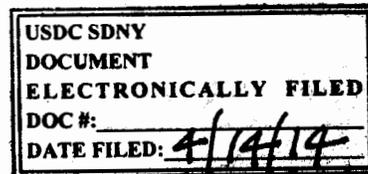
THE ACADEMIC ADVANTAGE,
EDWIN GUZMAN, LUZ MERCEDES,
ARLETTE HERNANDEZ, KRISTIN JOYNER,
NILSA DALMASI, RAYVON JONES,
ALICIA MCKAY, TERESA OSORIO, and
AYESHA YOUNG,

Defendants.
-----X



Civil Case No. 14-cv-1664 (LAK) (R66)

STIPULATION AND ORDER OF
SETTLEMENT AND DISMISSAL



WHEREAS, this Stipulation and Order of Settlement and Dismissal ("Stipulation") is entered into by and among plaintiff the United States of America ("United States" or "Government"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York; defendant The Academic Advantage ("Academic Advantage" or "Defendant"), which is co-owned by Mark Berookim and Michael Berookim ("Co-Owners"), by its authorized representatives; and third party 1-on-1 Learning With Laptops ("Learning With Laptops"), which is also owned by the Co-Owners, by its authorized representatives;

WHEREAS, during the 2010/2011 and 2011/2012 academic years ("Covered Period"), Academic Advantage provided Supplemental Educational Services ("SES"), in the form of after-school tutoring, to students attending underperforming public schools in New York City. In exchange for providing these after-school tutoring services, the New York City Department of Education paid Academic Advantage a fixed amount of money per hour for each student that it tutored, using funds provided to New York State by the federal Government pursuant to the

Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 *et seq.*;

WHEREAS, contemporaneous with the filing of this Stipulation, the Government is filing a civil fraud complaint (“Complaint”) against Academic Advantage and a number of its former employees, under the False Claims Act, 31 U.S.C. § 3739 *et seq.*, and the common law, alleging, among other things, that during the Covered Period: (1) employees within Academic Advantage’s New York City SES division routinely falsified daily student attendance records for the company’s after-school tutoring classes, to make it appear that more students had attended the company’s SES tutoring program than had, in fact, attended; (2) supervisors within Academic Advantage’s New York City SES division knew, deliberately ignored, or recklessly disregarded that attendance records were being falsified; and as a result (3) Academic Advantage billed and obtained federal funds for tutoring services that it never provided (together with all allegations asserted against Academic Advantage in the Complaint, “Covered Conduct”);

WHEREAS, the Government has shared with Academic Advantage and its authorized representatives certain results of the Government’s underlying investigation; and

WHEREAS, the parties to this Stipulation (“Parties”) have, through this Stipulation, reached a mutually-agreeable resolution addressing the conduct of Defendant set forth in the Complaint;

NOW, THEREFORE, upon the Parties’ agreement, IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Parties consent to this Court's exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them.

2. Academic Advantage hereby admits, acknowledges, and accepts responsibility for the following conduct related to its New York City SES program, all of which occurred during the Covered Period:

a. Academic Advantage was required to record daily attendance at each of its SES tutoring classes, including having each student who attended sign a standard attendance sheet ("daily student attendance sheet"). To receive payment for its SES tutoring, Academic Advantage was required to certify that its daily attendance records were "true and accurate."

b. Throughout the Covered Period, Academic Advantage employed individuals whom it referred to as "Site Managers" to manage its SES program at particular New York City public schools. The Site Managers supervised other employees, known as "Program Aides," who were also assigned to those schools. Employees with the title "Director of Development" supervised the Site Managers and Program Aides.

c. Throughout the Covered Period, Site Managers, Program Aides, and Directors of Development engaged in the following fraudulent conduct in connection with Academic Advantage's SES program in New York City:

(1) Site Managers routinely forged student signatures on daily student attendance sheets to make it appear that more students had attended Academic Advantage's SES tutoring classes than had, in fact, attended;

(2) Site Managers instructed Program Aides to forge student signatures on daily student attendance sheets;

(3) Program Aides followed the instructions they received from those Site Managers and forged student signatures on daily student attendance sheets;

(4) Site Managers and Program Aides instructed students to sign daily student attendance sheets for SES tutoring classes that those Site Managers and Program Aides knew the students either had not attended or would not be attending;

(5) Site Managers routinely signed false certifications on daily student attendance sheets, falsely certifying that after-school tutoring had been provided

to all of the students whose purported signatures appeared on the sheets, even though those Site Managers knew that tutoring had not been provided to many of those students; and

(6) Some Directors of Development knew — and others deliberately ignored or recklessly disregarded — that Site Managers and Program Aides were forging student signatures on daily student attendance sheets or otherwise falsifying student attendance records.

d. Academic Advantage's daily student attendance sheets from the Covered Period contain falsified student signatures, and report that more students had attended its SES tutoring classes than had, in fact, attended.

e. Academic Advantage used the above-referenced falsified daily student attendance sheets to prepare invoices that it then submitted in connection with its SES tutoring program. Many of these invoices falsely certified that the information on the invoices was "true and accurate." These invoices ultimately resulted in Academic Advantage being paid federal funds for SES tutoring that it never provided.

f. Shortly before the start of the Covered Period (*i.e.*, shortly before the start of the 2010/2011 academic year), Academic Advantage substantially expanded its New York City SES program by hiring former employees of The Princeton Review, Inc. ("Princeton Review"), which had provided SES tutoring in New York City from the 2006/2007 academic year through the 2009/2010 academic year. Those former employees of Princeton Review comprised the majority of Academic Advantage's New York City SES workforce during the Covered Period. In December 2012, Princeton Review — which in May 2012 changed its name to Education Holdings 1, Inc. — entered into a settlement agreement with the Government in which it admitted, among other things, that "[m]any of the individuals who were responsible for the day-to-day operations of Princeton Review's SES tutoring program ('Site Managers') routinely falsified entries on daily student attendance sheets, including by forging student signatures, to make it appear that more students had attended Princeton Review's SES tutoring classes than had actually attended," and that "Princeton Review's daily student attendance sheets from the Covered Period [the 2006/2007 academic year through the 2009/2010 academic year] are replete with falsifications, and report that many more students had attended Princeton Review's SES tutoring classes than had actually attended."

3. Academic Advantage shall pay the Government \$1,000,000 within ten (10) calendar days of the date this Stipulation is approved by the Court ("Approval Date"). Learning With Laptops shall pay the Government an additional \$1,000,000 in accordance with the

payment schedule annexed as Exhibit A. The \$2,000,000 referenced in the prior two sentences shall be referred to herein, collectively, as the "Settlement Amount."

4. The payments made pursuant to Paragraph 3 above shall be made at <http://www.pay.gov> to the U.S. Department of Justice account in accordance with instructions provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York.

5. The Co-Owners represent that, at the time Academic Advantage hired the former employees of Princeton Review referenced in Paragraph 2 above, the Co-Owners had no knowledge of any misconduct by those individuals. The Co-Owners further represent that they had no knowledge of the conduct described in Paragraph 2 above, and were not exposed to facts that would have put a reasonable person on notice of the conduct described in Paragraph 2 above. The Government has relied on the foregoing representations in entering into this Stipulation, and, at its option, may rescind this Stipulation and reinstate the Complaint if either of those representations is false.

6. Academic Advantage or, in the event that Academic Advantage ceases to exist, Learning With Laptops shall, at their own expense, maintain all of Academic Advantage's currently existing paper and electronic records concerning Academic Advantage's New York City SES program for a period of five (5) years following the Approval Date. On request, Academic Advantage and/or Learning With Laptops shall give the Government access to the above-referenced non-privileged records or to any requested subset of those non-privileged records, and shall assist the Government in locating and interpreting particular records. Academic Advantage and/or Learning With Laptops shall endeavor to comply with any other reasonable requests made in good faith by the Government in connection with any further

investigation relating to Academic Advantage's New York City SES program. At least sixty (60) calendar days prior to discarding any records covered by this Paragraph, Academic Advantage and/or Learning With Laptops shall contact the Government pursuant to the procedure set forth in Paragraph 25 below and give the Government an opportunity to take custody of such records.

7. Subject to Academic Advantage's and Learning With Laptops' full compliance with the terms of this Stipulation, and any exceptions, reservations or conditions set forth in this Stipulation, the Government releases Academic Advantage, Learning With Laptops and the Co-Owners from any civil or administrative monetary claim that the Government has for the Covered Conduct under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 *et seq.*, and the common law theories of payment by mistake and unjust enrichment; provided, however, that nothing in this Stipulation shall be construed as a release of any claims that the Government has against any current or former employee of Academic Advantage other than the Co-Owners.

8. Notwithstanding the release given in Paragraph 7 above, or any other term of this Stipulation, the following additional claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any civil or administrative liability, including the suspension and debarment rights of any federal agency;

d. any liability to the Government (or its agencies) for any conduct other than the Covered Conduct; and

e. any liability based upon obligations created by this Stipulation.

9. Academic Advantage shall be in default of this Stipulation if Academic Advantage or Learning With Laptops fails to make any of the required payments of the Settlement Amount as set forth in Paragraph 3 above, or if Academic Advantage or Learning With Laptops fail to comply materially with any other term of this Stipulation to which they are subject ("Default"). The Government shall provide written notice of any Default in the manner set forth in Paragraph 25 below. Academic Advantage or Learning With Laptops shall then have an opportunity to cure the Default within ten (10) calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within ten (10) calendar days of the delivery of the notice of Default, the United States, at its option, may (a) rescind this Stipulation and reinstate the Complaint; (b) seek specific performance of this Stipulation to cure any Default; (c) offset the amount of the payment that is due and outstanding under Paragraph 3 above from any amounts due and owing Academic Advantage or Learning With Laptops by any department, agency or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. In the event that the United States opts to rescind this Stipulation pursuant to this Paragraph, Academic Advantage and its Co-Owners shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct, except to the extent such defenses were available on the Approval Date. Academic Advantage and Learning With Laptops shall not contest any offset imposed or any collection action undertaken by the Government pursuant to

this Paragraph, either administratively or in any court. In addition, Academic Advantage or Learning With Laptops shall pay to the Government all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses. In the event that the United States opts to seek specific performance of this Stipulation, interest shall accrue at the rate of 9% per annum compounded annually on the payment that is due under Paragraph 3 above, beginning ten (10) calendar days after delivery of the notice of Default.

10. In any federal criminal prosecution or federal administrative action relating to the Covered Conduct, Academic Advantage shall not assert and waives any defenses it may have based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount, as set forth above in Paragraph 3 above, for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. Academic Advantage, the Co-Owners and Learning With Laptops release the Government, its agencies, officers, agents, employees and servants, from any claims that Academic Advantage, the Co-Owners or Learning With Laptops have asserted, could have asserted, or may assert in the future against the Government, its agencies, officers, agents, employees or servants, related to the Covered Conduct, as well as the Government's investigation, prosecution and settlement thereof.

12. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as otherwise provided herein.

13. Academic Advantage and Learning With Laptops represent and warrant that they have reviewed their financial situations, that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and that they reasonably believe that they shall remain solvent following compliance with their respective obligations under this Stipulation. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Academic Advantage and Learning With Laptops within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Academic Advantage or Learning With Laptops was or became indebted to on or after the date of this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

14. If within 91 days of the Approval Date of this Stipulation or any payment made pursuant to this Stipulation, Academic Advantage or Learning With Laptops commences, or a third party commences, any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of Academic Advantage's or Learning With Laptops' debts, or seeking to adjudicate Academic Advantage or Learning With Laptops as bankrupt or insolvent; or (b) seeking appointment of a trustee, custodian, or other similar official for Academic Advantage or Learning With Laptops or for all or part of Academic Advantage's or Learning With Laptops' assets, Academic Advantage and Learning With Laptops agree as follows:

a. Academic Advantage's and Learning With Laptops' obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and Academic Advantage and Learning With Laptops shall not argue or otherwise take the position in any such case, action, or proceeding that (i) Academic Advantage's or Learning With Laptops' obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) Academic Advantage or Learning With Laptops was insolvent at the time this Stipulation was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to Academic Advantage and Learning With Laptops.

b. If Academic Advantage's or Learning With Laptops' obligations under this Stipulation are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its option, may rescind this Stipulation and reinstate the Complaint, and pursue any civil and/or administrative claim, action, or proceeding against any Party that would otherwise be covered by the release in Paragraph 7 above. The Parties agree that (i) any such claim, action, or proceeding brought by the Government would not be subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the case, action, or proceeding described in the first clause of this Paragraph, and no Party shall argue or otherwise contend that the claim, action, or proceeding is subject to an automatic stay; (ii) no Party shall plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the Government within 60 calendar days of written notification that the Stipulation has been rescinded pursuant to this Paragraph, except to the extent such

defenses were available on the Approval Date; and (iii) the Government has a valid claim against Academic Advantage and Learning With Laptops for the outstanding balance of full Settlement Amount, and the Government may pursue the claim in the case, action, or proceeding described in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Academic Advantage and Learning With Laptops acknowledge that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

15. Academic Advantage and Learning With Laptops agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Academic Advantage or Learning With Laptops or Academic Advantage's or Learning With Laptops' agents in connection with:

- (1) matters related to this Stipulation;
- (2) the United States' audit(s) and civil and/or criminal investigation(s) of matters related to this Stipulation;
- (3) Academic Advantage's or Learning With Laptops' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and/or criminal investigation(s) in connection with matters related to this Stipulation (including attorney's fees);
- (4) the negotiation and performance of this Stipulation; and
- (5) any payments made to the United States pursuant to this Stipulation,

are unallowable costs for government contracting purposes (hereinafter referred to as “Unallowable Costs”).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Academic Advantage and Learning With Laptops, and Academic Advantage and Learning With Laptops shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Approval Date, Academic Advantage and Learning With Laptops shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Academic Advantage or Learning With Laptops or any of their agents from the United States. The United States, including the Department of Justice and/or the affected agencies, reserves its right to audit, examine, or re-examine Academic Advantage’s and Learning With Laptops’ books and records and to disagree with any calculations submitted by any of those persons or entities regarding any Unallowable Costs included in payments previously sought by those entities, or the effect of any such Unallowable Costs on the amount of such payments.

16. In connection with the negotiation of this Stipulation, Academic Advantage and Learning With Laptops represent that they have, in good faith, provided to the Government, in connection with the Government’s assessment of Academic Advantage’s and Learning With Laptops’ ability to pay the Settlement Amount, information concerning Academic Advantage’s and Learning With Laptops’ current financial condition (the “Financial Information”). The Government has relied on the Financial Information in entering into this Stipulation, and, at its

option, may rescind this Stipulation and reinstate the Complaint if the Financial Information is materially false or misleading.

17. Each Party shall bear its own legal and other costs incurred in connection with this matter.

18. Any failure by the Government to insist upon the material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon material performance of any and all of the provisions of this Stipulation.

19. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party in any subsequent dispute.

20. Subject to the exceptions set forth in this Stipulation, and in consideration of the obligations of Academic Advantage and Learning With Laptops as set forth in this Stipulation, and conditioned upon Academic Advantage's and Learning With Laptops' full compliance with the terms of this Stipulation, the Government shall dismiss with prejudice the claims against Academic Advantage (and only Academic Advantage) in the Complaint; provided, however, that nothing in this Stipulation shall require the Government to dismiss the claims it has asserted against any other individual in the Complaint; and provided further that nothing in this Stipulation shall preclude the Government from amending the Complaint to assert claims against any additional individuals or entities; and provided further that the Court shall retain jurisdiction

over this Stipulation and each Party to enforce the obligations of each Party under this Stipulation.

21. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties.

22. The undersigned counsel and any other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the entities indicated below.

23. This Agreement is binding upon Learning With Laptops and its successor entities.

24. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

25. Any notices or requests pursuant to this Stipulation shall be in writing and shall be delivered by hand, express courier, or email transmission followed by postage-prepaid mail, and shall be addressed as follows:

IF TO THE UNITED STATES:

Christopher B. Harwood, Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
New York, New York 10007
Email: christopher.harwood@usdoj.gov

IF TO ACADEMIC ADVANTAGE OR LEARNING WITH LAPTOPS:

Sean C. Cenawood
Dentons US LLP
1221 Avenue of the Americas
New York, New York 10020
Email: sean.cenawood@dentons.com

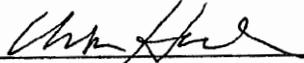
Agreed to by:

THE UNITED STATES OF AMERICA

Dated: New York, New York
March 10, 2014

PREET BHARARA
United States Attorney for the
Southern District of New York

By:


CHRISTOPHER B. HARWOOD
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: (212) 637-2728
Facsimile: (212) 637-2786

Attorney for the United States of America

ACADEMIC ADVANTAGE AND LEARNING WITH LAPTOPS

Dated: New York, New York
March 10th, 2014

By: Sean C. Cenawood
SEAN C. CENAWOOD
Dentons US LLP
1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 398-4867
Facsimile: (212) 768-6800

*Attorney for Academic Advantage and Learning
With Laptops*

Dated: Los Angeles, California
March 7, 2014

By: Mark Berookim
Mark Berookim

*Co-Owner of Academic Advantage and
Learning With Laptops*

Dated: Los Angeles, California
March 7, 2014

By: Michael Berookim
Michael Berookim

*Co-Owner of Academic Advantage and
Learning With Laptops*

SO ORDERED:

[Signature]
UNITED STATES DISTRICT JUDGE

Dated: 4/14, 2014

EXHIBIT A -- PAYMENT SCHEDULE

Due date	Payment	Balance
March 31, 2015	\$62,500	\$937,500
June 30, 2015	\$62,500	\$875,000
September 31, 2015	\$62,500	\$812,500
December 31, 2015	\$62,500	\$750,000
March 31, 2016	\$62,500	\$687,500
June 30, 2016	\$62,500	\$625,000
September 31, 2016	\$62,500	\$562,500
December 31, 2016	\$62,500	\$500,000
March 31, 2017	\$62,500	\$437,500
June 30, 2017	\$62,500	\$375,000
September 31, 2017	\$62,500	\$312,500
December 31, 2017	\$62,500	\$250,000
March 31, 2018	\$62,500	\$187,500
June 30, 2018	\$62,500	\$125,000
September 31, 2018	\$62,500	\$62,500
December 31, 2018	\$62,500	\$0